



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

August 14, 1961

Honorable J. W. Edgar
Commissioner of Education
Austin, Texas

Opinion No. WW-1112

Re: Authority of the Legis-
lature to provide an oper-
ating fund for the Central
Education Agency in the
General Appropriation Act
and to have transferred
thereto monies in the Text-
book Fund.

Dear Mr. Edgar:

Your request for an opinion reads as follows:

"Under the proposed and current draft of the Free Conference Appropriation Bill for the coming biennium there is a provision that the Central Education Agency may create a Operating Fund in the State Treasury and transfer funds for administration to such Operating Fund.

"On July 3, 1961, the State Board of Education pursuant to Section 3 of Article VII, Constitution of Texas, and Articles 2867, 2868 and 2869, V.C.S., set aside and allocated out of the State Available Fund for the next biennium \$10,023,190 for textbooks and administration commonly referred to as the State Textbook Fund.

"In the biennium beginning September 1, 1961, this Agency is contemplating the creation of an Operating Fund in the State Treasury and transferring to such Fund for State textbook administration such sums from the State Textbook Fund as shall be approved and directed for State textbook administration purposes by the State Board of Education.

"In his letter dated July 19, 1961, the Office of Comptroller of Public Accounts has advised, in substance, that such contemplated transfer will be made if the Attorney

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General will express in an opinion that such a transfer legally can be made.

"It will be appreciated if your office will render an opinion in this matter as will serve to authorize the Comptroller when directed to make a transfer to an Operating Fund for this Agency of State Textbook Funds for the State textbook administration."

The Legislature has the authority to create operating funds as an efficient method of carrying out the purposes for which special funds are created. Attorney General's Opinions WW-554 (1959), WW-557 (1959) and WW-573 (1959).

Section 3 of Article VII of the Constitution provides in part as follows:

" . . . it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free text books for the use of children attending the public free schools of this State; . . ."

Article 2867, Vernon's Civil Statutes, provides as follows:

"In order to carry out the provisions of this Act the State Board of Education shall annually at a meeting designated by them each year, set apart out of the available free school fund of the State an amount sufficient to purchase and distribute the necessary school books for the use of the pupils of this State for the scholastic year ensuing."

Article 2868, Vernon's Civil Statutes, provides as follows:

"The State textbook fund of this State shall consist of the fund set aside by the State Board of Education from the available school fund as is provided for in this Act, together with all funds accruing from the sale of disused books and all moneys derived from the purchase of books from boards of

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school trustees by private individuals, by schools, or from any other source."

Article 2869, Vernon's Civil Statutes, provides in part as follows:

" . . . Funds transferred in the textbook fund shall remain permanently in this fund until expended, and shall not lapse to the State at the close of the fiscal year. . . ."

The proposed creation of an operating fund in the State Treasury and transferring to such fund for State textbook administration purposes of such sums from the State Textbook Fund as shall be approved and directed for State textbook administration purposes by the State Board of Education is carrying out the explicit provisions of Section 3 of Article VII of the Constitution of Texas and Articles 2867, 2868 and 2869, Vernon's Civil Statutes, to-wit: that the State Textbook Fund shall be used "to provide free text books for the use of children attending the public free schools of this State."

Attorney General's Opinion 0-561 (1939) holds that Section 3 of Article VII of the Constitution of Texas does not confer upon the State Board of Education the power to control the expenditure of the State Textbook Fund, rather the Legislature has the authority and, therefore, the Textbook Fund is subject to the provisions of the General Appropriation Act; provide, of course, that it is expended for the purpose of acquiring textbooks and paying all necessary costs relating thereto in administering such Fund.

It is our opinion that it is within the discretion of the Legislature to determine the method of expending the State Textbook Fund for the purpose of providing free textbooks. The creation of an operating fund in the State Treasury and transferring to such fund for State textbook administration purposes sums from the State Textbook Fund constitutes a method of carrying out the provisions of Section 3 of Article VII of the Constitution of Texas. The creation of the operating fund is therefore a constitutional exercise of legislative power.

You are, therefore, advised that the Comptroller of Public Accounts is authorized to make the transfers outlined in your

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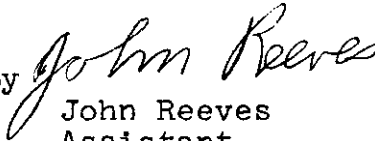
request to an operating fund, provided the Legislature creates such operating fund by appropriate language in the General Appropriation Act.

S U M M A R Y

The Legislature is authorized to provide in the General Appropriation Act for the creation of an operating fund for the Central Education Agency and direct the Comptroller of Public Accounts to transfer to such operating fund for State textbook administration purposes such sums from the State Textbook Fund as shall be approved and directed for State textbook administration purposes by the State Board of Education.

Yours very truly,

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Attorney General of Texas

By 
John Reeves
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE
W. V. Geppert, Chairman

Ben M. Harrison
Sam Lane
Ralph R. Rash
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REVIEWED FOR THE ATTORNEY GENERAL
By: Houghton Brownlee, Jr.